

4. (amended) A method of packaging edible seedlings for distribution to and use by consumers, said method comprising:

providing a container including a top portion and a bottom portion, said container having a closed position in which said

5 top portion and said bottom portion meet at an interface;

growing plants on a growing medium to a seedling stage;

placing said medium in said bottom portion of said container;

closing said container, with said medium in said bottom portion, into said closed position; and

10 distributing the closed container for sale to a consumer while said plants are still in the seedling stage;

said bottom portion having a height dimension such that a top surface of said growing medium is closely adjacent to said interface when said medium is placed in said bottom portion, and

15 said top portion having a top wall and a height dimension such that, when said container is in said closed position and said medium is in said bottom portion with said plants in the seedling stage extending upwardly therefrom, said plants are freely received in and protected by said top portion.

13. (amended) The method of claim 4, comprising providing a plurality of said containers, and providing said top wall of said top portion and a bottom wall of said bottom portion of each container with complementary portions to facilitate stacking of  
5 the containers and inhibit accidental tipping of a stack of the containers.

#### REMARKS

Claims 1, 4 and 13 have been amended. Following the amendments made herein, claims 1-15 remain pending in the application.

On page 2 of the Office Action, the Examiner objects to the specification and drawings because of certain alleged informalities. With respect to the specification, the Examiner

objects that "HB" should be "HP" on line 14 of page 10. The applicant respectfully disagrees. The typographical error appears on line 12 of the page 10 and not on line 14. In both cases, the reference character should be "HB". Therefore, the amendment set forth above corrects the typographical error on line 12 of page 10 and leaves line 14 on page 10 unamended.

The Examiner similarly objects that the reference character in Fig. 4 should be "HP" instead of "HB" to match the description in the specification. In light of the discussion in the last paragraph, the applicant points out that the designation of the reference character "HB" in Fig. 4, as filed, is correct.

The Examiner also requires that the reference character "HB" be added to Fig. 1. The applicant points out that the depth dimension is the same in Fig. 1 and Fig. 4 even though the dimension applies to a tray and a bottom portion of a container, respectively. Although the indication of the vertical dimension is not very clear in the pictorial Fig. 1, the applicant submits herewith a request for approval of drawing change that adds the dimension "HB" to Fig. 1.

It is submitted that the amendment to line 12 of page 10 set forth above and the addition of the reference character "HB" to Fig. 1 corrects any informalities in the specification and drawings.

In the Office Action, claims 1, 3-11 and 15 are rejected as being anticipated by Spencer, U.S. Patent No. 4,057,932. The applicant submits that the claims are not anticipated by and are allowable over the cited patent because the claims recite material elements not identically disclosed or described in the patent. Independent claims 1 and 4 have been amended herein to further emphasize the elements not found in the Spencer patent.

Spencer discloses a container for seedlings. The patent specifically discloses that the Spencer invention relates to containers for raising plants for transplantation, column 1, lines 17-18. The patent discusses the use of the container for

raising plants for reforestation, column 1, lines 36-39 and 61-62. The container is intended to be used "throughout all the rearing stages" of the plants, column 1, lines 32-34. Such rearing stages apparently include the stage in which the stems of the plants remain soft. This is evidenced by the discussion of the protection of the plant by ledges 53a, 54a in the "succulent" stage, column 9, lines 53-55. The discussion, at column 12, line 16 of using transplanting machines for transplanting the plants clearly suggests that the plants have developed beyond the succulent stage when they are removed from the container and transplanted.

The patent emphasizes the importance of the container forming individual cells for the individual plants so that each seedling is given an individual, non-competitive environment, column 2, lines 41-49. The disclosure of the patent refers to the container having a "number of cells", column 4, line 10, a series of "open-topped" cells, column 5, lines 43-44, a row of separate compartments or cells, column 6, lines 55-57, and seals between adjoining cells, column 6, line 62. The separate cells are shown in Figs. 10 and 11. Each of the two independent claims, claims 1 and 18, specifically recite "a series of open-topped cells". The purpose of the separate cells is to prevent the roots of adjoining seedlings from becoming entangled, column 7, lines 32-34 and 66-68. The vertical walls of each cell are structured to direct root growth downwardly, column 7, lines 2-4.

Amended claim 1 of the present application recites a method of packaging edible seedlings for distribution to and use by consumers. Although the Examiner asserts that Spencer discloses a method of packaging seedlings for distribution to and use by consumers, the disclosure of the Spencer patent does not support this assertion. Rather, Spencer discloses the use of the patented container in reforestation projects. Moreover, Spencer does not disclose the growing of **edible** seedlings and the Examiner does not address this feature.

Claim 1 has been amended to specify that a continuous medium-receiving space is defined by the bottom surface and sidewall portions of the tray and that plants (not a plant) on a growing medium are placed in this space. The positioning of a plurality of plants in the tray and the dimensioning so that the top of the growing medium is closely adjacent to the upper edge surface of the sidewall portions has the desirable and claimed result of allowing easy snipping of the stems of the plants without removing the medium from the tray.

Amended claim 1 specifically recites distributing the tray for sale to a consumer while the plants are still in "the seedling stage". At page 2, line 31 through page 3, line 3 of the specification, the present application defines the term "seedling stage" as referring to a stage of development in which both the stems and leaves of the plants remain soft and edible. The Spencer patent uses the term "seedling" in a much broader sense. Not only does Spencer fail to disclose distribution of the seedlings at the stage of development defined by the present claims, but Spencer also discusses the desired goal of growing seedlings that are strong enough to stand transplanting. This strongly suggests that the plants have developed well beyond the stage in which the stems remain soft and edible (assuming that the particular species is ever edible).

It is submitted that amended claim 1 is allowable over the Spencer patent because amended claim 1 recites growing edible seedlings for sale to a consumer, positioning a number of plants in one continuous space, and distributing the plants for sale to consumers while the plants are still in the seedling stage. Spencer does not describe or disclose the growing of edible seedlings, the growing of seedlings for sale to a consumer, the use of a tray having a continuous space for more than one plant, or distribution of plants still in the seedling stage as defined in the present application. On the contrary, Spencer specifically discloses and claims the use of separate open-topped

cells structured to direct root growth and the growing of the seedlings with each seedling having its own individual non-competitive environment so that roots of adjoining seedlings do not become entangled. Modifying the disclosure of the Spencer patent along the lines of the claimed invention would, thus, tend to destroy the invention on which the Spencer patent is based. It also would tend to defeat the Spencer goal of providing plants suitable for transplantation.

Like amended claim 1, amended claim 4 recites a method of packaging edible seedlings for distribution to and use by consumers and distribution of the container for sale to a consumer while the plants are still in the seedling stage. Amended claim 4 further recites that the container includes a top portion and a bottom portion. The growing medium with the plants growing thereon is placed in the bottom portion. The top portion has a top wall and a height dimension such that, when the container is closed, the plants are freely received in and protected by the top portion. The term "freely received" is defined in the specification at page 10, lines 23-26. Therein it is stated that "freely received" means that the plants are received into the top portion without undue crowding and without the tops of the plants being damaged by the top wall of the container.

As discussed above, Spencer does not disclose or suggest packaging **edible** seedlings or packaging any type of seedlings for distribution to and used by **consumers**. Spencer also does not disclose or suggest distributing the containers for sale to a consumer while the plants are still in the **seedling stage**, as defined in the specification of the present application. The Examiner asserts that Spencer discloses a container that includes a top portion and a bottom portion. The Examiner also asserts that these two portions meet at an interface, 53, 54, which are the shoulder members positioned near the tops of the two halves of the Spencer container. Thus, the top portion alleged by the

Examiner is simply the short extensions of the vertical walls of the two halves of the container above the shoulders. These extensions are not provided with a top wall, nor does the Examiner assert that there is such a top wall. Therefore, Spencer clearly does not disclose or describe or in any way suggest a top portion having a top wall into which the plants are "freely received", as defined on page 10 of the present specification.

In view of the above, it is submitted that amended claim 4 clearly is allowable over the Spencer patent.

Each of claims 3, 5-11, and 15 is dependent on either claim 1 or claim 4. It is submitted that each of these claims is allowable over the Spencer patent because it is dependent on an allowable claim or claims and because it further specifies a novel and non-obvious combination of features.

Claim 5 specifies that the top portion and bottom portion are hingedly connected to each other along a side portion of the interface between the top portion and bottom portion. The Examiner cites the hinge 62, 63 of the Spencer container as disclosing this feature. This is incorrect and inconsistent with the Examiner's interpretation of the Spencer patent as set forth in the discussion regarding claim 4. Therein, the Examiner refers to the interface between the bottom portion as being the shoulders 53, 54. These shoulders are on the upper end of the container, opposite the lower end on which the hinge 62, 63 is located. Therefore, under the Examiner's interpretation of the patent, the hinge cannot possibly be located at the interface between the top and bottom portions. In this regard, the applicant notes that the two halves of the Spencer container that are hingedly connected together are essentially mirror image halves that, in use, are vertically oriented and cooperate to form the individual cells of the container. Each half has a bottom portion and a top portion, which are integrally formed as one unit.

Each of claims 6 and 7 recites a latch that releasably secures the container in its closed position. With respect to this feature, the Examiner cites column 8, lines 1-17 of the Spencer patent. Therein, Spencer describes the overlapping of shoulders 53, 54 when the walls of the container are in the closed position to provide "shiplap" joints. The patent states that the interlocking arrangement reduces twisting and distortion of the shoulders when the container is in use. Spencer in no way discloses, describes or suggests that the shiplap joint is a latch or that it releasably **secures** the container in the closed position.

Claims 8 and 9 are directed toward providing the presently claimed invention with venting when the plants are in the container and the container is in its closed position. The Examiner purports to find this feature in the Spencer patent. However, the discussion in the Office Action ignores the fact that the tops with a Spencer container are open and have no cover or top portion of the top wall, and that, therefore, venting is simply not an issue with regard to the Spencer container.

Claims 10 and 11 recite an open position of the container in which the plants are easily accessible to a user to allow stem portions of the plants to be snipped. Although the applicant agrees that apparently the plants are accessible whether the Spencer container is in the open or the closed position, Spencer does not disclose accessibility for enabling a user to snip stem portions of the plant. Moreover, such a snipping of the stem portions would be inconsistent with and would actually defeat the purpose of providing the seedlings for transplantation.

The Office Action rejects claims 2 and 12 as being obvious over Spencer in view of Graham et al., U.S. Patent No. 5,382,270. Each of claims 2 and 12 specify that the plants are culinary herbs. The Examiner admits that Spencer does not disclose the growing of culinary herbs. The Examiner cites Graham et al. as disclosing a method of growing culinary herbs. Graham et al.

discloses a method in which one or more plants are grown in a growing medium comprising hydrogel particles charged with aqueous nutrient solution. There is nothing in either the Graham et al. patent or the Spencer patent that would provide any motivation for combining the teachings of the two references as suggested by the Examiner. Rather, the two patents are related to two very different types of methods for growing different types of plants for different purposes.

In the Office Action, claim 13 is rejected as being unpatentable over Spencer in view of Groth et al., U.S. Patent No. 4,742,644. Groth et al. discloses tray-like shipping containers having sidewalls with upper ends that have tongue-and-groove portions for stacking the containers. Claim 13 has been amended herein to clarify that what is being claimed is a top wall and a bottom wall with complementary portions to facilitate stacking. This feature is clearly not disclosed by Groth et al. since the Groth et al. container does not include any cover or top wall.

In the Office Action, claim 14 is rejected as being obvious over Spencer in view of Wareing et al., U.S. Patent No. 4,790,105. Claim 14 specifies that the medium is placed in the bottom portion of the container after the plants have been grown to the seedling stage. Wareing et al. disclose a package of plant material that includes a pack of seedling plants in a sealed sterile dish containing an agar gel. The package also includes a growing tray with a pack of compost into which the plants may be transplanted. This arrangement is inconsistent with the important objective of the Spencer invention of keeping the roots of the plants from intermingling. In addition, the Spencer method of growing cannot be properly modified so that the plants are placed in the container after they have been grown to the seedling stage. This would tend to destroy or defeat the important goal of providing individual non-competitive environments for each of the plants and of directing the growth



of the roots of each plant independently of the roots of other plants.

In view of the above, it is submitted that each of claims 1-15 is allowable over the cited references and is in condition for allowance. Accordingly, early reconsideration and allowance of each of claims 1-15 are requested.

Respectfully submitted:

David G. Sasuga

By: Joan H. Pauly  
Joan H. Pauly, Reg. No. 30,207  
Barnard & Pauly, P.S.  
P.O. Box 58888  
Seattle, WA 98138-1888  
(206) 246-0568  
Fax: (206) 243-4618

**VERSION WITH MARKINGS TO SHOW CHANGES MADE**

The first sentence of the first full paragraph on page 10 of the description has been amended to read:

An important feature of the second embodiment of the invention is the use of a container 12 that has top and bottom portions 14, 16 with height dimensions HT, [HP] HB that meet specific criteria.

Claims 1, 4 and 13 have been amended to read:

1. (amended) A method of packaging edible seedlings for distribution to and use by consumers, said method comprising:

5 providing a tray including a bottom surface having a periphery, and sidewall portions extending upwardly from said periphery and terminating in an upper edge surface;  
[and] said tray having a predetermined height dimension extending from said bottom surface to said upper edge surface, and said bottom surface and said sidewall portions  
10 defining a continuous medium-receiving space;

growing plants on a growing medium to a seedling stage;

placing said medium in said space in said tray; and

distributing said tray, with said medium placed in said tray and said plants growing on said medium, for sale to a  
15 consumer while said plants are still in the seedling stage;

said height dimension being such that a top surface of said growing medium is closely adjacent to said upper edge surface when said medium is placed in said tray to allow easy snipping of said stems without removing said medium  
20 from said tray.

4. (amended) A method of packaging edible seedlings for distribution to and use by consumers, said method comprising:

providing a container including a top portion and a bottom portion, said container having a closed position in which said

5 top portion and said bottom portion meet at an interface;

growing plants on a growing medium to a seedling stage;

placing said medium in said bottom portion of said container;

closing said container, with said medium in said bottom portion, into said closed position; and

10 distributing the closed container for sale to a consumer while said plants are still in the seedling stage;

said bottom portion having a height dimension such that a top surface of said growing medium is closely adjacent to said interface when said medium is placed in said bottom portion, and

15 said top portion having a top wall and a height dimension such that, when said container is in said closed position and said medium is in said bottom portion with said plants in the seedling stage extending upwardly therefrom, said plants are freely received in and protected by said top portion.

13. (amended) The method of claim 4, comprising providing a plurality of said containers, and providing said top wall of said top portion and a bottom wall of said bottom portion of each container with complementary portions to facilitate stacking of  
5 the containers and inhibit accidental tipping of a stack of the containers.